

# EXHIBIT 5

STATE OF MICHIGAN  
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHERYL A. COSTANTINO and EDWARD  
P. MCCALL, JR.,

Plaintiffs,

v.

Case No. 20-014780-AW

CITY OF DETROIT; DETROIT ELECTION  
COMMISSION; JANICE M. WINFREY, in  
her official capacity as the CLERK OF THE  
CITY OF DETROIT and the Chairperson of  
the DETROIT ELECTION COMMISSION;  
CATHY M. GARRETT, in her official  
capacity as the CLERK OF WAYNE  
COUNTY; and the WAYNE COUNTY  
BOARD OF CANVASSERS,

Defendants,

v.

MICHIGAN DEMOCRATIC PARTY,

[Proposed] Intervenor Defendant.

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**AFFIDAVIT OF DONNA M. MACKENZIE**

I, Donna M. MacKenzie, having been duly sworn according to law, do hereby depose and state as follows.

1. I am at least 18 years of age and have personal knowledge of the below facts, which are true and accurate to the best of my knowledge and belief.

2. I am a U.S. citizen and a resident of and registered voter in Michigan. I am an attorney licensed in Michigan and currently practice with the law firm of Olsman MacKenzie Peacock & Wallace.

3. On Wednesday, November 4, 2020, I served as a credentialed challenger for the Michigan Democratic Party at TCF Center in Detroit, Michigan, where Detroit's absent voter ballots were counted. I was present at TCF Center from approximately 9:00am until 2:30pm.

4. The ballot counting process was very transparent. Each ballot counting table had six election workers, each of whom had a specific task that would be performed for each ballot. For example, one worker would open the envelope, another would remove the ballot from the secrecy sleeve, and so on. Each table also had a computer monitor, which was angled in the corner of the table so that all observers could see it.

5. When issues were raised by challengers, they were immediately brought to the attention of supervisors, who calmly and politely addressed the issues and allowed the challengers and observers to view the ballots. Although some challengers had to be admonished not to touch the ballots, they were given the opportunity to look at ballots whenever issues arose.

6. My impression was that, throughout the approximately five-and-a-half hours I served at TCF Center, there were many more Republican Party challengers than Democratic Party challengers. There were certainly more Republican challengers when I left around 2:30pm.

7. Challengers were allowed to move freely about the facility and observe ballot counting. Although social distancing requirements were sometimes observed, all of the counting occurred in full view of the challengers. There were more than enough challengers to have observers at each table, and I recall that at one point, approximately 10 Republican challengers were gathered around a table where no ballots were actively being processed because all of the counting tables that were actively processing ballots were adequately staffed.

8. In addition to viewing counting myself, I also spoke with other challengers, both Democrats and Republicans, about their experiences and what they saw in the facility.

9. Any time a question was asked or an issue raised by a challenger, a crowd would gather and word would spread through the facility very quickly.

10. I saw no evidence of election workers backdating absentee ballots or otherwise processing invalid absentee ballots, and I did not hear of anyone else witnessing or challenging such activities.

11. I saw no evidence of election workers processing or counting ballots from voters who were not included in the Qualified Voter File or supplemental sheets or assigning ballots to random names in the system, and I did not hear of anyone else witnessing or challenging such activities.

12. I saw no evidence of election workers using false information or incorrect birthdays to process absentee ballots, and I did not hear of anyone else witnessing or challenging such activities.

13. I saw no evidence of election workers neglecting to verify the signatures on absentee ballots before processing them, and I did not hear of anyone else witnessing or challenging such activities.

14. I saw no evidence of election workers removing ballots from their secrecy sleeves before deciding whether the ballots should be processed, and I did not hear of anyone else witnessing or challenging such activities.

15. I saw no evidence of election officials processing or counting ballots received after the election deadline or falsely reporting that late ballots were received on time, and I did not hear of anyone else witnessing or challenging such activities.

16. I saw no evidence of election officials refusing to record challenges or challengers being asked to leave after voicing challenges, and I did not hear of anyone else witnessing or

challenging such activities. I frequently saw Republican challengers who asked for ballot numbers and wrote those numbers down on their own personal notepad, but they did not voice any challenge to the ballots. At no point did I witness a ballot challenge going unrecorded or unaddressed by election workers.

17. I saw no evidence of election officials locking challengers out of the facility so they could not observe the process, and I did not hear of anyone else witnessing such activities. While some challengers waited outside when the room was at capacity, at no point did I witness or hear of any counting that occurred without challengers present.

18. I saw no evidence of election workers duplicating ballots without allowing challengers to check the accuracy of the duplication, and I did not hear of anyone else witnessing such activities. In fact, when I did witness a duplication, the election workers went out of their way to make sure the challengers could view the ballot. Although challengers were not permitted to touch the ballot, election officials offered to move the ballot around the table and flip it over so that everyone could get a clear look at it.

19. I saw no evidence of unsecured or otherwise questionable ballots being delivered to TCF Center, and I did not hear of anyone else witnessing or challenging such activities.

20. I decided to leave around 2:30pm because most of the counting had stopped. By that time, it seemed that fewer than half of the counting tables were still processing ballots.

21. I observed frequent objectionable behavior on the part of Republican challengers. For example, I saw Republican challengers (identifiable because they were wearing wristbands or lanyards) approach tables for the sole purpose of attempting to slow down the process and intimidate election workers. By the time I left at 2:30pm, the atmosphere in the TCF Center had grown tense and the Republican challengers had become more aggressive.

22. In short, what I witnessed in the TCF Center was an organized, methodical, and completely transparent process. The only issues I saw were problems caused by the Republican challengers, who frequently engaged in disruptive, intimidating, and aggressive behavior.

23. Further, Affiant sayeth not.

Donna MacKenzie

Donna M. MacKenzie

11/11/2020

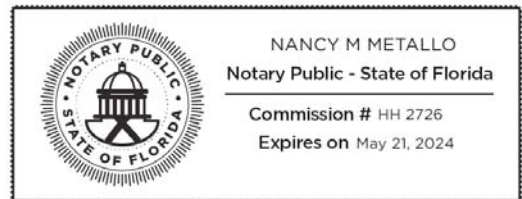
Date

Subscribed and sworn to (or affirmed) before me on this 11th day of November, 2020.

Nancy M Metallo

Notary Public

Electronic Notary Public



Notarized online using audio-video communication

My commission expires on 05/21/2024.